

AMENDED  
ORDINANCE NO. R-2014-24 AMENDED

TAX CODES(S): 82-06-25-017-110.008-027;  
82-06-25-017-110.003-027;  
82-06-25-017-110.010-027

AN ORDINANCE TO REZONE CERTAIN REAL ESTATE IN THE CITY OF EVANSVILLE, STATE OF INDIANA, MORE COMMONLY KNOWN AS 5401 East Lloyd Expressway; 5403 East Lloyd Expressway; 34 Fielding Road BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF EVANSVILLE, INDIANA, AS FOLLOWS, TO WIT:

Section 1: That Ordinance no. G-82-51, being the Municipal Code of the City of Evansville, Indiana, 1982, and more particularly Title XV, Chapter 153, by making certain changes in Atlas 1, which is made part of said section with respect to the following described real estate located in the City of Evansville, Vanderburgh County, State of Indiana:

Part of the Northwest Quarter of Section 25, Township 6 South, Range 10 West of the 2nd P.M., lying in Knight Township, Vanderburgh County, Indiana and being more particularly described as follows:

- Commencing at the Northeast corner of said Quarter Section;
- 1<sup>st</sup>: South 00°00'07" East 45.66 feet to the true point of beginning; thence continue along said East line South 00°00'07" East 346.34 feet to the Northeast corner of Fielding Manor, as per plat thereof, recorded in Plat Book "M", page 69 in the office of the Recorder of Vanderburgh County; thence along the North line of said subdivision and parallel with the North line of said Quarter Section
  - 2nd: South 89°23'00" West 499.60 feet to the Northwest corner of Fielding Manor; thence parallel with the East line of said Quarter Section
  - 3rd: North 00°00'07" West 311.73 feet to the South right-of-way line of State Road 66 (a.k.a. Lloyd Expressway); thence along said right-of-way line for the following 2 (two) courses
  - 4th: South 81°12'15" East 90.79 feet; thence
  - 5th: North 82°30'44" East 413.38 feet to the point of beginning and containing 3.653 acres more or less.

by changing the zoning classification of the above-described real estate from R-1 to C-2 With Use Commitment, and said real estate is hereby so rezoned and reclassified.

Section 2. The Director of the Area Plan Commission of Evansville and Vanderburgh County is hereby authorized and directed, upon the enactment and approval of this ordinance, to cause the change to be made on said Atlas 1 as set out in Section 1 of this Ordinance, and to make notation in ink thereon of reference to the number of this ordinance and the date of final publication of the amendatory ordinance after its passage and approval; however, failing to do so shall not invalidate this Ordinance.

Section 3. This ordinance shall be in full force and effect from and after its passage by the Common Council, its approval by the Mayor, and its publication as required by law, which publication is now ordered.

**FILED**

JAN 21 2015

*Anna Windness*  
CITY CLERK

Section 4. The subject property herein rezoned shall be used and developed only in accordance with the use and development commitment which is incorporated as part of this Petition for Rezoning and recorded in the office of the Recorder of Vanderburgh County, Indiana on 02/03/2015 at Instrument No.: 2015R00002545. No improvement location permits shall be issued unless the proposed use is in compliance with said recorded use and development commitment.

Passed by the Common Council of Evansville, Indiana, on this 26 day of January, <sup>2015</sup>~~2014~~.

Al. San Adams  
President

ATTEST: Jana Winkhorst  
City Clerk

Presented to me, the undersigned, City Clerk of the City of Evansville, Indiana, to the Mayor of said City, the 28 day of January, ~~2014~~ 2015

Jana Winkhorst  
City Clerk

Having examined the foregoing Ordinance, I do now, as Mayor of the City of Evansville, Indiana, approve said Ordinance, and return same to the City Clerk this 2ND day of FEBRUARY, 2015 at 9:45 o'clock AM.

Paul Shue  
Mayor of the City of Evansville, Indiana

This instrument was prepared by Krista B. Lockyear, JACKSON KELLY PLLC, 221 N.W. Fifth Street, P.O. Box 1507, Evansville, IN 47706, Telephone (812) 422-9444

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.  
Krista B. Lockyear

**AMENDED  
USE AND DEVELOPMENT COMMITMENT**

WHEREAS, the undersigned, The Church of the Cross of General Baptist Incorporated, an Indiana non-profit corporation, is the Owner of certain real estate situated in the City of Evansville, Vanderburgh County, Indiana, commonly described as 5401 East Lloyd Expressway, Evansville, Indiana, more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof (the "Real Estate"); and

WHEREAS, the Real Estate is currently classified as a Residential (R-1) zoning district under the Evansville Zoning Code and is so indicated on the zoning maps maintained by the staff of the Evansville-Vanderburgh County Area Plan Commission; and

WHEREAS, Jr. Food Stores, Inc., a Kentucky corporation, (and a wholly owned subsidiary of Houchens Food Group, Inc.), (the "Petitioner") and Owner have requested that the Real Estate be reclassified to zoning district Commercial (C-2); and

WHEREAS, Owner and Petitioner are desirous of accommodating the concerns of the surrounding property owners by making a written commitment concerning the use and development of the Real Estate pursuant to I.C.36-7-4-1015;

NOW, THEREFORE, in consideration of the foregoing, Owner and Petitioner make the following use and development commitments concerning the use of the Real Estate:

1. Restricted Use. The following C-2 uses shall be prohibited on the Real Estate:
  - a. Apartment dwelling unit(s);
  - b. Multiple dwellings (a dwelling for three or more families);
  - c. Sororities and fraternities;
  - d. Pawnshop;
  - e. Mortuary;
  - f. Taxidermist
  - g. Arcade;
  - h. Indoor archery range;
  - i. Bar;
  - j. Bowling alley;
  - k. Dance hall;
  - l. Meeting hall;
  - m. Party house;
  - n. Lodges and private clubs;
  - o. Night club;
  - p. Pool and billiard room;
  - q. Skating rink;
  - r. Theater;
  - s. Trampoline center;
  - t. Hotel and motel.

2. Landscaping. The future development of the Real Estate will include landscaping on the Real Estate substantially as shown on the landscaping plan set forth on Exhibit "B" attached hereto and by this reference made a part hereof (the "Landscaping Plan"). Petitioner shall install such landscaping no later than thirty (30) days after the completion of the construction on the Real Estate (or as soon thereafter as weather may reasonably permit). Petitioner shall maintain such landscaping in a good and healthy condition.
3. Eastern Property Boundary. Petitioner shall construct an earthen berm along the eastern boundary of the Real Estate that currently abuts residential property, at a height approximately six (6) feet above the existing ground level (hereinafter referred to as the "Berm"). A six (6) foot tall beige, vinyl, privacy fence shall be erected at the top of the Berm (the "Berm Fence"). The Berm Fence shall be tied in to the neighbors' existing fence running east-west adjacent to the Sycamore Pointe Condominiums to the east and the neighbors' existing fence running east-west adjacent to the neighbors' properties to the south, such that a barrier to foot traffic is created (also as shown on Exhibit "B"). The Berm shall be covered in sod and/or ground cover in a tasteful manner designed to provide ease of upkeep. Evergreens and/or deciduous trees shall be planted and maintained along the top of the Berm to add relief to the continuous fence screen. The construction of the Berm and Berm Fence shall be completed within six (6) months of the commencement of excavation work on the Real Estate. The planting of sod or seed, groundcover and/or trees shall be completed within one (1) year of the commencement of construction on the Real Estate. Petitioner shall be responsible for maintaining the Berm and the Berm Fence in a good, aesthetically pleasing manner.
4. Southern Property Boundary. Petitioner acknowledges that the residential neighbors abutting the Real Estate to the south have existing fences along the common property lines with the Real Estate (the "Southern Neighbors' Fences"), some of which may be encroaching in areas upon the Real Estate. Petitioner agrees to allow the Southern Neighbors' Fences to remain in place as the same are currently located. In the event the neighbors abutting the Real Estate to the south decide to remove any part of the Southern Neighbors' Fences, Petitioner agrees to replace the entire fence along the southern property line, which fence shall be a six (6) foot tall beige, vinyl, privacy fence to match the Berm Fence.
5. Retaining Wall. Petitioner shall construct a retaining wall approximately thirty (30) feet north of the southern property line of the Real Estate, utilizing Redi-Rock or a similar engineered retaining wall system. The retaining wall length will be determined by the Petitioner. The Real Estate shall be gradually sloped between the property line and the retaining wall with a flat safety zone prior to the top of the retaining wall, with landscaping as shown in the Landscaping Plan. This retaining wall shall have stone face appearance. Petitioner shall construct a two rail vinyl fence at the top of the retaining wall.
6. Deliveries. Petitioner shall cause all deliveries of groceries, merchandise and fuel to enter and exit the Real Estate via the right-in, right-out only driveway cut on the Lloyd Expressway, and shall prohibit such deliveries from utilizing Fielding Road except in the event of emergency. Furthermore, all deliveries shall occur between the hours of 7:00 a.m. and 5:00 p.m.

7. Hours of Operation. Store commercial business located on the Real Estate shall be restricted to hours of operation between 5:00 a.m. and 12:00 a.m. The fuel pumps shall be 24 hour operation, and shall be located between the building and the Lloyd Expressway.
8. Trash Removal. All trash removal shall occur between 8:00 a.m. and 5:00 p.m.
9. Lighting. All lighting will be directed inward and downward so as to not have light trespass onto the adjacent residential property.
10. Signage. No off-premise signs shall be allowed on the Real Estate.
11. Traffic Impact Study. Petitioner agrees to provide, at Petitioner's expense, a traffic impact study ("TIS") to determine the effect the development of the Real Estate may have on adjacent roadways. Petitioner agrees to work with the Evansville City Engineering office and/or the Indiana Department of Transportation to design and install such improvements to Fielding Road and/or the Lloyd Expressway as may be warranted based upon the findings of the TIS.
12. Damage to Property. Petitioner agrees that it shall repair damage to any residence directly abutting the Real Estate if such damage is directly caused by the actions of the Petitioner or its agents and contractors during the course of development of the Real Estate; provided, however, that if the subject damage is caused in part by the actions of Petitioner and in part by other causes, natural conditions, or the actions or omissions of other parties, that Petitioner's repair obligations hereunder shall be limited to the extent that the actions of Petitioner or its agents or contractors during the course of development of the Real Estate directly caused such damage."
13. Term. The commitments and undertakings herein made and expressed shall terminate, expire and be of no further force or effect if the Real Estate should be rezoned due to the filing of some subsequent petition to amend the zoning classification of the Real Estate.
14. Effective Date. This Commitment shall be recorded in the office of the Recorder of Vanderburgh County, Indiana, and shall take effect upon the adoption of the zoning classification of the Real Estate from Residential to C-2 Zoning District.
15. Binding Effect; Enforcement; Attorneys' Fees. All commitments and undertakings herein expressed shall be binding on the Owner and the Owner's heirs, legal representatives, successors and assigns, and shall run in favor of the Area Plan Commission of Evansville-Vanderburgh County and all the owners of real estate lying within the radius of one-half (1/2) mile from the Real Estate herein described and shall be enforced by invoking any legal, equitable or special remedy, including specific performance, injunction or other equitable relief pursuant to the manner of enforcement as set forth in I.C. and 36-7-4-1015. If it is necessary to initiate administrative or judicial proceedings to enforce any such commitment or undertaking, the person or entity obtaining enforcement in such proceedings shall also recover its reasonable attorneys' fees and costs of suit from the undersigned.

The person executing this instrument on behalf of Owner and Petitioner represent and warrant that the execution and delivery of this instrument is duly has been duly authorized and shall be binding upon the same.

IN WITNESS WHEREOF, this Use and Development Commitment is hereby made and entered into this 21 day of Jan., 2014 for the purposes set forth herein.

Jr. Food Stores, Inc.

By: \_\_\_\_\_

signature

Its: \_\_\_\_\_

Tim Rickett, DIRECTOR OF PROP & STORE DEV.  
printed name and title

"Petitioner"

STATE OF \_\_\_\_\_

Kentucky

)

)

SS:

COUNTY OF \_\_\_\_\_

Warren

)

Before me, a Notary Public in and for said County and State, personally appeared the within named Tim Rickett, as Director of Prop + Store Dev. of Jr. Food Stores, Inc., and acknowledged the execution of the above and foregoing to be the voluntary act and deed of said company.

WITNESS my hand and seal this 21 day of January, 2014.

\_\_\_\_\_  
Notary Public

Laurie Keen

Printed Name

My Commission Expires:

7-15-15

My County of Residence:

Butler

The Church of the Cross of General Baptist Incorporated

By: *Jack Eberhardt*  
signature

Its: JACK EBERHARDT  
printed name and title

"Owner"

STATE OF INDIANA )  
 ) SS:  
COUNTY OF VANDERBURGH )

Before me, a Notary Public in and for said County and State, personally appeared the within named *Jack Eberhardt*, as *Pastor* of The Church of the Cross of General Baptist Incorporated, , and acknowledged the execution of the above and foregoing to be the voluntary act and deed of said company.

WITNESS my hand and seal this 26 day of January, 2015.



**KRISTA B. LOCKYEAR**  
Resident of Vanderburgh County, IN  
Commission Expires: December 13, 2019

*Krista B. Lockyear*  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
My County of Residence:

This Instrument was prepared by Krista B. Lockyear, JACKSON KELLY PLLC, 221 N.W. Fifth Street, P.O. Box 1507, Evansville, Indiana 47706-1507, (812) 422-9444

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Krista B. Lockyear

## EXHIBIT "A"

Part of the Northwest Quarter of Section 25, Township 6 South, Range 10 West of the 2nd P.M., lying in Knight Township, Vanderburgh County, Indiana and being more particularly described as follows:

Commencing at the Northeast corner of said Quarter Section; thence along the East line of said Quarter Section, South  $00^{\circ}00'07''$  East 45.66 feet to the true point of beginning; thence continue along said East line

- 1<sup>st</sup>: South  $00^{\circ}00'07''$  East 346.34 feet to the Northeast corner of Fielding Manor, as per plat thereof, recorded in Plat Book "M", page 69 in the office of the Recorder of Vanderburgh County; thence along the North line of said subdivision and parallel with the North line of said Quarter Section
- 2nd: South  $89^{\circ}23'00''$  West 499.60 feet to the Northwest corner of Fielding Manor; thence parallel with the East line of said Quarter Section
- 3rd: North  $00^{\circ}00'07''$  West 311.73 feet to the South right-of-way line of State Road 66 (a.k.a. Lloyd Expressway); thence along said right-of-way line for the following 2 (two) courses
- 4th: South  $81^{\circ}12'15''$  East 90.79 feet; thence
- 5th: North  $82^{\circ}30'44''$  East 413.38 feet to the point of beginning and containing 3.653 acres more or less.





- TREE TYPE AND SUGGESTED SPECIES**
- DECIDUOUS SHADE TREE
    - OAK, MAPLE, BIRCH OR ASH
  - EVERGREEN TREE
    - NORFOLK ISLAND PINE OR HOLLY
  - DECIDUOUS SHRUBS
    - DOGWOOD, CORYDOUS, CHERRIES
    - LAUREL, YEW, HOLLY OR BOXWOODS
  - DECIDUOUS SHRUBS
    - RED TWIG DOGWOOD, WINDY, HYDRANGEA
    - WITCH HAZEL



ARNOLD CONSULTING  
ENGINEERS, INC.  
P.O. BOX 1338  
BOWLING GREEN, KY 42101  
PHONE (270) 780-9445



5401 E. LLOYD EXPRESSWAY  
EVANSVILLE, IN  
0 10' 20' 40' 80' 120'  
GRAPHIC SCALE 1" = 40'



AE-1 ANDY EASLEY ENGINEERING  
CIVIL ENGINEERING (812) 624-2481 LAND SURVEYING  
1133 WEST MILL ROAD EVANSVILLE, INDIANA 47710

VERIFIED PETITION FOR REZONING

2014-29 -PC

ORDINANCE NO. R- 2014-24  
COUNCIL DISTRICT: WARD 1, MCGINN

PETITIONER: Jr. Food Stores, Inc. PHONE: \_\_\_\_\_  
ADDRESS: 700 Church Street, Bowling Green, KY ZIP CODE: 42101  
OWNER OF RECORD: The Church of the Cross of General Baptist Incorporated PHONE: \_\_\_\_\_  
ADDRESS: 5401 E. Lloyd Expressway, Evansville, IN ZIP CODE: 47715

1. Petition is hereby made for the amendment of the "Zoning Maps" of the Area Plan Commission of Evansville and Vanderburgh County, pursuant to the Indiana Code and the Municipal Code of Evansville.
2. Premises affected are on the South side of Lloyd Expressway (S.R.66) a distance of 0 feet East of the corner formed by the intersection of Lloyd Expressway and Fielding Road.  
Registered Neighborhood Association (if applicable): N/A

LEGAL DESCRIPTION: See Attached Exhibit A

Subdivision: Fielding Manor Block: \_\_\_\_\_ Lot No.: \_\_\_\_\_ (where applicable  
- if not in a subdivision, insert legal here or attach to ordinance)

3. The commonly known address is: 5401 East Lloyd Expressway; 5403 East Lloyd Expressway; 34 Fielding Road Evansville, IN 47715
4. The real estate is located in the Zone District designated as: R-1
5. The requested change is to (Zone District): C-2 with Use Commitment
6. Present existing land use is: Church
7. The proposed land use is: Neighborhood Grocery Store
8. Utilities provided: (check all that apply)  
City Water: X Electric: X Gas: X Storm Sewer: X  
Sewer: Private: \_\_\_\_\_ Public: X Septic: \_\_\_\_\_
9. All attachments are adopted by reference.
10. The owner, or attorney for the owner, hereby certifies that the owner of record shown above owns 50% or more of the area of the above described real estate. I affirm under the penalties for perjury that the foregoing representations are true.

(REQUIRED) Signatures:

DATE: 9-8-14 PETITIONER:   
(when signed) PRINTED NAME: Krista B. Lockyear, attorney for Petitioner

DATE: \_\_\_\_\_ OWNER OF RECORD: \_\_\_\_\_  
(when signed) PRINTED NAME: \_\_\_\_\_

REPRESENTATIVE FOR PETITIONER NAME: Krista B. Lockyear  
(Optional) ADDRESS/ZIP: 221 N.W. Fifth St., P.O. Box 1507, Evansville, IN  
47706-1507  
PHONE: 812.422.9444

**FILED**

SEP 08 2014

  
CITY CLERK

## **EXHIBIT "A"**

Part of the Northwest Quarter of Section 25, Township 6 South, Range 10 West of the 2nd P.M., lying in Knight Township, Vanderburgh County, Indiana and being more particularly described as follows:

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